In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 41

THE UNITED STATES, PETITIONER

v.

ROBERT ESNAULT-PELTERIE

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MOTION OF THE UNITED STATES TO AMEND ORDER.

Now comes the Solicitor General, on behalf of the United States, and moves that the order of this Court entered in the above cause on December 7, 1936, be amended by excluding therefrom the provision vacating the judgment of the Court of Claims and by adding a provision remanding the record to the Court of Claims with directions to make additional findings of fact in conformity with the opinion of this Court and thereupon to return the record to this Court.

STANLEY REED,
Solicitor General.

DECEMBER 21, 1936.

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MEMORANDUM IN SUPPORT OF MOTION TO AMEND ORDER

This Court on December 7, 1936, vacated the judgment herein and remanded the cause to the Court of Claims for such proceedings in harmony with the opinion of this Court as the Court of Claims may determine, and with instructions that it specifically find whether plaintiff's patent in suit is valid and if found valid whether it was infringed by the defendant.

Under circumstances similar to those presented here, this Court has at times retained jurisdiction of the case while remanding it to the Court of Claims, and has in its order of remand expressly

directed that court to return the record to this Court, with additional findings of fact. *United States* v. *Adams*, 6 Wall. 101; *United States* v. *Adams*, 9 Wall. 661; *Ripley* v. *United States*, 220 U. S. 491. In the case last cited this procedure was described by the Court as "the approved practice" (p. 496). It is submitted that this procedure would be appropriate in this case. It has not been suggested that the evidence before the Court of Claims, upon which its subsidiary findings are based, is inadequate to form the basis of the findings required by this Court. In view of the limited purpose of the remand, the form of order herein proposed would render the subsequent proceedings both adequate and expeditious.

The situation presented here is different from that involved in *Duke Power Co.* v. *Greenwood County*, No. 32, decided on December 14, 1936. In the latter case, the appellate court had remanded the case to the trial court because of supervening events occurring subsequently to the decree. Here, the case is being remanded solely for a clarification of the findings. Moreover, distinct rules of procedure may well apply to cases originating in the Court of Claims, since the evidence in such cases is not sent to this Court, the record being limited to the findings of fact and conclusions of law.

It is respectfully requested that the order of this Court be amended accordingly.

STANLEY REED,
Solicitor General.
JAMES W. MORRIS,
Assistant Attorney General.
DRURY W. COOPER,
ALEXANDER HOLTZOFF,
Special Assistants to the Attorney General.

DECEMBER 1936.

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